

FEB 12 2007

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF:	:	CASE NUMBER: A06-71620-PWB
	:	
MARIA ALEJANDRE SCHIAFFINO,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtor.	:	BANKRUPTCY CODE
<hr style="width: 40%; margin-left: 0;"/>		
DEBORAH BOUCHARD,	:	
	:	
Plaintiff	:	
	:	
v.	:	ADVERSARY PROCEEDING
	:	NO. 06-9108
MARIA A. SCHIAFFINO a/k/a	:	
MARIA ALEJANDRE SCHIAFFINO,	:	
	:	
Defendant.	:	

ORDER GRANTING MOTION TO DISMISS COMPLAINT

The Debtor seeks dismissal of the § 523(a)(2) dischargeability complaint filed December 27, 2006, by Deborah Bouchard ("Plaintiff") because it was filed one day after the December 26, 2006 deadline for filing such a dischargeability complaint expired and because Plaintiff did not seek an extension of the deadline to file a complaint. Plaintiff has filed no response to the motion.

Rule 4007 of the Federal Rules of Bankruptcy Procedure provides that a complaint to determine dischargeability of a debt pursuant to 11 U.S.C. § 523(a)(2), (4), or (6) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court may extend the time for filing a complaint on motion of a party in interest after hearing on notice, but such "motion shall be filed before the time has expired." FED. R. BANKR. P. 4007(c).

In *Kontrick v. Ryan*, 540 U.S. 443 (2004), the U.S. Supreme Court determined that the filing deadlines prescribed in Bankruptcy Rules 4004 and 9006(b)(3) are "claim-processing rules

that do not delineate what cases bankruptcy courts are competent to adjudicate.” *Kontrick*, 540 U.S. at 454. The Court noted, in dicta, that whether Rules 4004 and 9006(b)(3) “despite their strict limitations, could be softened on equitable grounds is therefore a question we do not reach.” *Id.* at 457. The sole question before the Supreme Court was whether the debtor had forfeited his right to assert the untimeliness of the creditor’s amended complaint by failing to raise the issue until after that complaint was adjudicated on the merits. The Court found he had. The Court noted, however, that if the debtor had timely raised the late filing issue, the question before the bankruptcy court would have been “whether the time restrictions in the Rules are in such emphatic form as to preclude equitable exceptions.” *Id.* at 458. Although this was not the issue before it in *Kontrick*, the Supreme Court cited several cases where it has upheld timely challenges to late filings under the Federal Rules of Criminal Procedure and the Federal Rules of Bankruptcy Procedure, including *Taylor v. Freeland & Kronz*, 503 U.S. 638, 644 (1992), which recognized the finality of deadlines imposed by Bankruptcy Rule 4003(b) as implicated by 11 U.S.C. § 522(l). *Id.*

The Debtor has timely raised the late filing issue in this adversary proceeding and the Plaintiff has offered no defense, legal or equitable, to the motion to dismiss. Based on the foregoing, the Court finds that Debtor has asserted a basis for dismissal of the complaint. Therefore, it is

ORDERED that the Debtor's motion to dismiss is **GRANTED**.

The Clerk is directed to serve copies of this Order on the persons on the attached Distribution List.

At Atlanta, Georgia, this 12 day of February, 2007.

A handwritten signature in black ink, appearing to read "Paul W. Bonapfel", is written over a horizontal line.

PAUL W. BONAPFEL
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

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